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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,	
Plaintiff and Respondent,	C062447
v.	(Super. Ct. No. 09F00859)
LORNA JUNE SEYMORE,	
Defendant and Appellant.	

Defendant Lorna June Seymore entered a negotiated plea of no contest to creating and approving fraudulent driver's licenses by manipulating the Department of Motor Vehicles' computer database. (Pen. Code, § 502, subd. (c).) The trial court suspended imposition of her sentence and placed her on five years' probation on various terms and conditions.

Defendant contends, and the People concede, that a condition of her probation is unconstitutionally overbroad. We accept the concession and shall direct the probation order to be amended.

**DISCUSSION**

Over defendant's objection, the court imposed a condition of probation requiring, among other things, that she "not

associate with known or reputed users or sellers of marijuana, dangerous drugs or narcotics, or be in places where narcotics and/or dangerous drugs are present[.]”<sup>1</sup>

Defendant contends and the People concede that this condition violated her constitutional rights because it imposed a vague and overbroad condition of probation. She asks that the condition be modified to include a knowledge qualifier.

We accept the People’s concession that the condition should be modified. In *In re Sheena K.* (2007) 40 Cal.4th 875 (*Sheena K.*), the California Supreme Court held that a probationary condition prohibiting the probationer from associating with anyone who is a member of a specified class of persons, without a requirement that the probationer know the person is a member of the class, is unconstitutionally vague (*id.* at pp. 889-892); that because such a condition presents a pure question of law, a probationer’s failure to object to its imposition does not forfeit the issue for appeal (*id.* at pp. 888-889); and that an acceptable remedy when such a condition is challenged on appeal is for the appellate court to insert the knowledge requirement (*id.* at p. 892).

The challenged probation condition imposed on defendant here relates also to the places where she is allowed to be. We find the condition imposed is similar for constitutional purposes to that of *Sheena K.*, and we shall insert the knowledge

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<sup>1</sup> In the order of probation, this condition is not numbered, but it is assigned the number four in the probation report.

requirement proposed by the parties. (See *People v. Garcia* (1993) 19 Cal.App.4th 97, 102-103.)

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue of whether amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to her pending appeal and entitle her to additional presentence credits. We conclude that the amendments do apply to all appeals pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant is not final"]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying the rule of *Estrada* to amendment allowing award of custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying *Estrada* to amendment involving conduct credits].) Defendant is not among the prisoners excepted from the additional accrual of credit. (Pen. Code, § 4019, subds. (b), (c); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Consequently, defendant having served 18 days of presentence custody, is entitled to 18 days of conduct credits.

#### **DISPOSITION**

Defendant's conviction is affirmed. The probation condition regarding association with sellers of narcotics is modified to state: "Defendant is not to associate with individuals whom she knows are unlawfully selling or using drugs and/or narcotics, and she is not to be in places where she knows drugs and/or narcotics are illegally present."

As so modified, the order of probation is affirmed. The court is directed to amend its records to reflect the modifications, and the additional accrual of presentence credits, and to forward the appropriate documents to defendant and to the probation department.

SIMS, J.

We concur:

SCOTLAND, P. J.

NICHOLSON, J.